

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GARY T. NEWELL,  
Petitioner,

v.

HEIDI LACKNER, Warden,  
Respondent.

Case No. [13-cv-03309-YGR](#) (PR)

**ORDER ADDRESSING PETITIONER'S  
PENDING MOTIONS; AND  
DIRECTING HIM TO FILE AN  
AMENDED PETITION**

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On August 15, 2013, the Court issued an Order granting Petitioner's request for a stay of proceedings while he returned to state court to exhaust his state judicial remedies. The Court also stated:

Nothing further will take place in this action until Petitioner receives a final decision from the highest state court and, within **twenty-eight (28) days** of doing so, moves to reopen the action, lift the Court's stay and amend the stayed petition to add the newly-exhausted claims.

Dkt. 3 at 2.

On June 11, 2014, Petitioner informed the Court that his state proceedings had concluded and requested that the Court lift the stay (Dkt. 10); however, he did not amend the stayed petition to add the newly-exhausted claims. Thereafter, Petitioner filed a motion entitled, "Request for Clarification and Order Lifting Stay of Proceedings and Reopening File." Dkt. 11. The Court GRANTS Petitioner's request for clarification (Dkt. 11) and directs Petitioner to file an amended petition in this Court which incorporates the newly-exhausted claims he intends to raise in federal court, as directed below. Petitioner's requests to lift the stay and reopen this action (Dkts. 10, 11) are DENIED without prejudice to the Court *sua sponte* reconsidering his requests after he files his amended petition.

## CONCLUSION

1. Petitioner's "Request for Order Lifting Stay of Proceedings" and "Request for Clarification and Order Lifting Stay of Proceedings and Reopening File" are GRANTED in part and DENIED in part. Dkts. 10, 11. Petitioner's request for clarification is GRANTED, and he is directed to file an amended petition. Petitioner's requests to lift the stay and reopen this action (Dkts. 10, 11) are DENIED without prejudice to the Court *sua sponte* reconsidering his requests after he files his amended petition.

2. No later than **twenty-eight (28) days** of the date of this Order, Petitioner must file an amended petition in this Court which incorporates the newly-exhausted claims he intends to raise in federal court. The Court will lift the stay and reopen this action on the date that Petitioner files his amended petition. Petitioner must submit the amended petition on the attached blank habeas petition form, clearly label the petition as the "Amended Petition," and write in the case number for this action—Case No. C 13-3309 YGR (PR)—on the form. He should also attach to his amended petition a copy of his petition to the California Supreme Court, if the document is available to him. If Petitioner fails to file an amended petition within the prescribed period, the Court will dismiss this action without prejudice for failure to prosecute.

3. The Clerk of the Court shall send Petitioner a blank § 2254 habeas petition form.

4. This Order terminates Docket Nos. 10 and 11.

IT IS SO ORDERED.

Dated: February 20, 2015

  
 YVONNE GONZALEZ ROGERS  
 United States District Judge